

LEGISLATION AFFECTING
THE FEDERAL RULES OF PRACTICE AND PROCEDURE

106th Congress

SENATE BILLS

S. 32 No title

- Introduced by: Thurmond
- Date Introduced: 1/19/99
- Status: Referred to the Committee on Judiciary
- Provisions affecting rules
 - **Criminal Rule 31(a)** is amended by striking "unanimous" and inserting "by five-sixths of the jury."

S. 96 Y2K Act (See H.R. 775) Pub. L. No 106-37.

- Introduced by: McCain
- Date Introduced: January 19, 1999
- Status: Referred to Committee on Commerce; Hearings held on February 9, 1999; Committee reported bill favorably on March 3, 1999; Letter from Director opposing class action and special pleading requirements sent on March 24, 1999; Cloture vote not obtained 5/18/99; Text inserted in H. R. 775 as passed Senate (CR S6998) on 6/15/99
- Provisions affecting rules: federalizing Y2K class actions and heightened pleading requirements

S. 248 Judicial Improvement Act of 1999

- Introduced by: Hatch (5 co-sponsors)
- Date Introduced: 1/19/99
- Status: Referred to the Committee on Judiciary; 3/24/99 Referred to Subcommittee on Oversight and Courts
- Provisions affecting rules
 - Sec. 4. Would amend Section 1292(b) of title 28, and allow for interlocutory appeals of court orders relating to class actions;
 - Sec. 5. Creates original federal jurisdiction based upon minimal diversity in certain single accident cases; and
 - Sec. 10. Clarifies sunset of civil justice expense and delay reduction plans.

S. 250 Federal Prosecutor Ethics Act

- Introduced by: Hatch (3 co-sponsors)
- Date Introduced: 1/19/99
- Status: Referred to the Committee on Judiciary
- Provisions affecting rules
 - Sec. 2 authorizes Attorney General to establish special ethical standards governing federal prosecutors in certain situations. Those standards would override state standards.

S.353 Class Action Fairness Act of 1999

- Introduced by: Grassley (3 co-sponsors)
- Date Introduced: February 3, 1999
- Status: Referred to the Committee on Judiciary 5/4/99 Subcommittee on Oversight and Courts; hearings held on May 4, 1999
- Provisions affecting rules:
 - Sec. 2. Provides for notification of the Attorney General & state attorney generals;
 - Sec. 2. Limits on attorney fees
 - Sec. 3. Minimal diversity requirements;
 - Sec. 4. Allows for removal of class actions to federal court; and
 - Sec. 5. Removes judicial discretion from **Civil Rule 11(c)** in all cases.

S.461 Year 2000 Fairness and Responsibility Act (See S. 96 and H.R. 775) (Pub. L. No. 106-37)

- Introduced by: Hatch (2 co-sponsors)
- Date Introduced: February 24, 1999
- Status: Referred to Committee on the Judiciary; hearings held on March 3, 1999; Letter from Director opposing class action and special pleading requirements sent on March 24, 1999; Judiciary Committee reported favorably on March 25, 1999
 - Sec. 103 establishes special ("fraud-like") pleading requirements
 - Sec. 404 established minimal diversity for Y2K class actions

S. 625 Bankruptcy Reform Act of 1999

- Introduced by: Grassley (5 co-sponsors)
- Date Introduced: March 16, 1999
- Status: Referred to the Committee on Judiciary; Letter sent by Director to Hatch 3/23/99; Ordered to be reported with amendments favorably Apr 27, 1999; Committee on Judiciary reported to Senate with amendments. (Report No. 106-49 May 11, 1999.) Placed on Senate Legislative Calendar; 11/19/99 Unanimous consent agreement in Senate to vote on cloture motion on Jan. 25 (CR S15061)
- Provisions affecting rules:
 - Section 702 requires clerks of court to maintain a register of all governmental units to ensure that the appropriate government office receives adequate notice of bankruptcy filings.

Sections 102, 319, and 425 would authorize or mandate the initiation of the rulemaking process with respect to separate proposals for rule changes.

S. 721 No title (See H.R. 1281)

- Introduced by: Grassley (6 co-sponsors)
- Date Introduced: March 25, 1999
- Status:
- Provisions affecting rules:
 - Section 1 states that the presiding judge of any appellate court or district court may, in his or

her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides; safeguards are provided to obscure the identity of nonparty witnesses; the Judicial Conference is authorized to promulgate advisory guidelines

- Section 3 provides a 3-year sunset of section 1.

S. 755 No title

- Introduced by: Hatch (14 co-sponsors)
- Date Introduced: March 25, 1999
- Status: April 12 read the second time, placed on the calendar
- Provisions affecting rules: Delays effective date of the "McDade" provision on Rule 4.2 contacts with represented parties

S. 758 Fairness in Asbestos Compensation Act of 1999

- Introduced by: Ashcroft (13 co-sponsors)
- Date Introduced: March 25, 1999
- Status: Referred to the Committee on Judiciary; 10/5/99 hearing held by sub. Administration Oversight and the Courts.
- Provisions affecting rules:
 - Section 208 gives exclusive jurisdiction, regardless of the amount in controversy or citizenship of parties, to federal courts;
 - Section 301 requires the board of the Asbestos Resolution Corporation to establish procedures for ADR;
 - Section 307(j) creates an penalty for an inadequate offer; and
 - Section 402 bars class actions in asbestos cases without the consent of each defendant, and governs removal.

S. 855 Professional Standards for Government Attorneys Act of 1999

- Introduced by: Leahy (7 co-sponsors)
- Date Introduced: April 21, 1999
- Status: Referred to the Committee on Judiciary.
- Provisions affecting rules:
 - Requires the Judicial Conference to submit to the Chief Justice a report that includes recommendations with respect to amending the Federal Rules of Civil and Criminal Procedure to provide for such a uniform national rules governing conduct of government attorneys. Directs the Judicial Conference, in developing recommendations, to consider: (1) the needs and circumstances of multi-forum and multi-jurisdictional litigation; (2) the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law; and (3) practices that are approved under Federal statutory or case law or that are otherwise consistent with traditional Federal law enforcement techniques.

S. 899 21st Century Justice Act of 1999

- Introduced by: Hatch (7 co-sponsors)
- Date Introduced: April 28, 1999

- Status: Referred to the Committee on Judiciary. May 18, 1999 partially incorporated into S. 254
- Provisions affecting rules:
 - Sections 5103-08 provide victims of crime with allocution rights; **Criminal Rule 11** is amended
 - Section 5224 amends **Evidence Rule 404** to permit consideration of evidence showing disposition of defendant
 - Section 6515 amends **Criminal Rule 43(c)** to permit videoconferencing of several types of proceedings in criminal cases, including sentencing
 - Section 6703 amends **Criminal Rule 46** governing criterion for forfeiture of a bail bond
 - Section 7101 amends **Criminal Rule 24** to equalize the number of peremptory challenges
 - Section 7102 amends **Criminal Rule 23** to permit a jury of 6 in a criminal case
 - Section 7105 amends the **Rules Enabling Act** and would restructure the composition of the rules committees to include more prosecution-oriented members
 - Section 7321 sets up ethical standards governing attorney conduct
 - Section 7477 permits disclosure of grand jury information to government attorneys not involved in the original prosecution

S. 934 Crime Victims Assistance Act

- Introduced by: Leahy (5 co-sponsors)
- Date Introduced: April 30, 1999
- Status: Referred to the Committee on Judiciary.
- Provisions affecting rules:
 - Section 121 would amend **Criminal Rule 11** to require the Government to make a reasonable effort to notify the victim of a crime of violence of the time and date of any hearing on entering a plea of guilty or nolo contendere, and the victim's right to attend that hearing. If the victim attends the proceeding, the court shall afford the victim an opportunity to be heard on the plea.
 - Section 122 would amend **Criminal Rule 32** detailing the contents of the Victim Impact Statement; give the victim an opportunity to submit a written or oral statement, or an audio or videotaped statement; require the Government to make a reasonable effort to notify the victim of a crime of violence of the time and date of any sentencing hearing and the victim's right to attend that hearing. If the victim attends the proceeding, the court shall afford the victim an opportunity to be heard.
 - Section 123 would amend **Criminal Rule 32.1** require the Government to make a reasonable effort to notify the victim of a crime of violence of the time and date of any hearing to revoke or modify sentence and the victim's right to attend that hearing. If the victim attends the proceeding, the court shall afford the victim an opportunity to be heard.
 - Section 131 would amend **Evidence Rule 615** to allow the victim of a crime of violence to be present unless the court finds the testimony of that person will be material affected by hearing the testimony of other witnesses or there are too many victims. [Note: It appears the amendments are based on the old version of Evidence Rule 615 (i.e do not account for the 2/98 amendment)]

S. 957 Sunshine in Litigation Act of 1999

- Introduced by: Kohl (No co-sponsors)
- Date Introduced: May 4, 1999
- Status: Referred to the Committee on Judiciary.

- Provisions affecting rules:
 - section 1 would amend chapter 111 of title 28, U.S.C. to require a court to make particularized findings of fact prior to entering a protective order; the proponent of the protective order has the burden of proof; stipulated protective orders would be unenforceable

S. 1360 Secret Service Protection Privilege Act of 1999

- Introduced by: Leahy (0 co-sponsors)
- Date Introduced: July 13, 1999
- Status: Referred to the Committee on Judiciary.
- Provisions affecting rules:
 - Section 3 amends title 18 to establish a secret service privilege (EV501)

S. 1437 Thomas Jefferson Researcher's Privilege Act of 1999

- Introduced by: Moynihan (0 co-sponsors)
- Date Introduced: July 26, 1999
- Status: Referred to the Committee on Judiciary.
- Provisions affecting rules:
 - Section 3 would amend CV45 to allow a court to quash a subpoena requiring disclosure of information relating to study or research of academic, commercial, scientific, or technical issues
 - Section 4 adds EV502 which would create a privilege for information relating to study or research of academic, commercial, scientific, or technical issues

S. 1700 "Hunt for the Truth Act"

- Introduced by: Durbin (0 co-sponsors)
- Date Introduced: October 6, 1999
- Status: Referred to the Committee on Judiciary.
- Provisions affecting rules:
 - Section 2 would add new criminal Rule 33.1 allowing a judge upon motion of the defendant to order post-conviction forensic DNA testing if the technology for that type of testing was not available when the defendant was convicted.

HOUSE BILLS

H.R. 461 Prisoners Frivolous Lawsuit Prevention Act of 1999

- Introduced by: Gallegly (27 co-sponsors)
- Date Introduced: February 2, 1999
- Status: Referred to the Committee on Judiciary; 2/25/ 99 Referred to the Subcommittee on Courts and Intellectual Property.
- Provisions affecting rules:
 - Sec. 2 would amend **Civil Rule 11** creating special sanction rules for prisoner litigation.

H.R. 522 Parent-Child Privilege Act of 1999

- Introduced by: Andrews (No co-sponsors)
- Date Introduced: February 3, 1999
- Status: Referred to the Committee on Judiciary; 2/25/99 Referred to the Subcommittee on Courts and Intellectual Property.
- Provisions affecting rules:
 - Sec. 2 would create new **Evidence Rule 502** providing for a parent/child privilege.

H.R. 771 No title

- Introduced by: Coble (15 co-sponsors)
- Date Introduced: February 23, 1999
- Status: Referred to the Committee on Judiciary; 3/11/99 Forwarded by Subcommittee to Full Committee; Letter from Judge Niemeyer to Hyde 3/22/99
- Provisions affecting rules:
 - Amends **Civil Rule 30** to require that depositions be recorded by stenographic or stenomask means unless the court upon motion orders, or the parties stipulate in writing, to the contrary.

H.R. 775 Year 2000 Readiness and Responsibility Act; Small Business Year 2000 Readiness Act (See S. 96 and S. 461) Public Law: 106-37 (07/20/99)

- Introduced by: Honorable W. Eugene Davis (62 co-sponsors)
- Date Introduced: February 23, 1999; ordered report 5/4/99
- Status: Referred to the Committee on Judiciary; Letter from Director opposing class action and special pleading requirements sent on March 24, 1999; hearing 4/13; Passed by House of Representatives on May 12, 1999; Signed by President on 7/20/99
- Provisions affecting rules:
 - Section 103 establishes special ("fraud-like") pleading requirements
 - Section 404 establishes federal jurisdiction of Y2K class actions over \$1 million

H.R. 833 Bankruptcy Reform Act of 1999

- Introduced by: Gekas (105 co-sponsors)
- Date Introduced: February 24, 1999
- Status: Referred to the Committee on Judiciary; Forwarded by Subcommittee to Full Committee in the Nature of a Substitute by the Yeas and Nays: 5 - 3; letter sent by Director to Hyde on 3/23/99; Passed(313 - 108) 05/05/99; Read twice in the Senate 5/12/99;
- Provisions affecting rules:
 - Section 802 requires clerks of court to maintain a register of all governmental units to ensure that the appropriate government office receives adequate notice of bankruptcy filings.
 - Sections 102, 403, 607, and 816(e) would authorize or mandate the initiation of the rulemaking process with respect to separate proposals for rule changes.

H.R. 967 Multiparty, Multiforum Jurisdiction Act of 1999 (See H.R. 2112)

- Introduced by: Sensenbrenner (1 co-sponsor)
- Date Introduced: March 3, 1999
- Status: Referred to the Committee on Judiciary; Mar 16, 1999: Referred to the Subcommittee on

Courts and Intellectual Property.

- Provisions affecting rules:
 - Minimal diversity for class actions arising from single-event mass tort

H.R. 1281 No title (See S. 721)

- Introduced by: Grassley (43 co-sponsors)
- Date Introduced: March 25, 1999
- Status: 3/25/98 Referred to the House Committee on the Judiciary; referred to the Subcommittee on Courts and Intellectual Property 4/7/99;
- Provisions affecting rules:
 - Section 1 states the presiding judge of any appellate court or district court may, in his or her discretion, permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides; safe guards are provided to obscure the identity of nonparty witnesses; the Judicial Conference is authorized to promulgate advisory guidelines
 - Section 3 provides a 3-year sunset of section 1.

H.R. 1658 Civil Asset Forfeiture Reform Act

- Introduced by: Hyde (59 co-sponsors)
- Date Introduced: May 4, 1999
- Status: 5/4/99 Referred to the House Committee on the Judiciary; Measure passed House on June 24, 1999, received in the Senate June 28, 1999

H.R. 1852 Multidistrict Trial Jurisdiction Act of 1999 (See H.R. 2112)

- Introduced by: Sensenbrenner (2 co-sponsors)
- Date Introduced: May 18, 1999
- Status: 5/19/99 Referred to the Subcommittee on Courts and Intellectual Property. 5/20/99 Subcommittee Consideration and Mark-up Session Held; 5/20/99 Forwarded by Subcommittee to Full Committee by Voice Vote;
 - Addresses Lexecon issue.

H.R. 1875 Interstate Class Action Jurisdiction Act of 1999

- Introduced by: Goodlatte (37 co-sponsor)
- Date Introduced: May 19, 1999
- Status: Referred to the Committee on Judiciary; Hearings Held on July 21, 1999, Mark-up held July 27, 1999 and August 3, 1999; Ordered to be Reported (Amended) by the Yeas and Nays: 15 - 12.; letter from Executive Committee generally stating Judiciary's opposition more detailed letter to follow; 09/23/99 Measure passed House, amended, (222-207) . 11/19/99 Referred to Senate Committee on the Judiciary
- Provisions affecting rules: None directly; general class action considerations; extends minimal diversity to all class actions

H.R. 2112 Multidistrict; Multiparty, Multiforum Trial Jurisdiction Act of 1999 (See H.R. 1852)

- Introduced by: Sensenbrenner (2 co-sponsors)

- Date Introduced: June 9, 1999
- Status: 9/13/99 Measure passed House; 9/14/99 referred to the Senate Committee on Judiciary; 10/27/99 Measure passed and modified by Senate to exclude "single-event" mass tort choice of law provisions; 11/16/99 Conference scheduled in House
- Provisions affecting rules
 - Addresses Lexecon issue and choice of law issues for single event mass torts.

JOINT RESOLUTIONS

S. J. RES. 3; A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

- Introduced by: Kyl (33 Co-sponsors) Date Introduced: 1/19/99
- Status: Referred to the Committee on Judiciary; 3/23/99 Referred to Subcommittee on Constitution, Federalism, Property; 3/24/99 Committee on Judiciary, Hearings held; 9/30/99 passed House; 10/4/99 placed on Senate Legislative Calendar.
- Provisions affecting rules
 - Calls for a Constitutional Amendments enumerating victim's rights.